Amendments to the Drawings:

The attached drawing pages include the following:

Replacement Sheets

Remarks:

Applicant has carefully studied the non-final Examiner's Action mailed 11/06/2006, having a shortened statutory period for response set to expire 02/06/2007, and all references cited therein. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Action by centered headings and numbered paragraphs that correspond to the centered headings and paragraph numbering employed by the Office, to ensure full response on the merits to each finding of the Office.

Drawings

1. The drawings stand objected to because the reference numeral 28 does not appear therein. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are attached to page 6 of this paper.

Specification

2. The disclosure stands objected to because:

(i) The adjective "large" is omitted from the term "removing large or very bodies" in line 6 of paragraph 7. The specification is amended accordingly.

(ii) The term "tool.10" in line 4, paragraph 34 should be "tool 10." The specification is amended accordingly.

Claim Rejections – 35 U.S.C. § 102

3. Applicant acknowledges the quotation of 35 U.S.C. § 102(b).

4. Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Peterson. Reconsideration and withdrawal of this ground of rejection is requested in view of the amendment made to said claim 1, for the following reasons.

As indicated in Fig. 4 of Peterson, catch basket 33 is fully housed within tubular member 4 when control knob 1 is in its fully retracted position. In sharp contrast, Applicant's foreign body capturing means is not fully housed within Applicant's elongate base member when said foreign body capturing means is fully retracted. As disclosed in [Para 37], [Para 38], and [Para 39] of Applicant's specification:

> As best understood in connection with Figs. 4-7, net 22 is not fully housed within elongate bore 14 when handle 18 is in its fully retracted position. More particularly, Figs. 4, 6, and 7 depict slot

> 32 which is truncate in extent relative to the extent of elongate slot 26. Truncate slot 32 is formed in bottom wall 34 of elongate base 12, is parallel to elongate bore 14, and is in open communication with the leading half, approximately, of said elongate bore 18. Thus, as indicated in Figs. 6 and 7, the main body of net 22 depends from rim 20 even when rim 20 is fully retracted within elongate bore 18 and the lower end of the main body of the net extends below said bottom wall 34.
>
> In this illustrative embodiment, the width of truncate slot 32 is greater than the width of elongate slot 26 but less than the width of elongate bore 14. This difference in widths creates a shoulder that retains rim 20 within elongate bore 14 when handle 18 is in its fully retracted configuration.
>
> Net 22 is formed of a flexible material such an elastic fabric that remains firmly attached to rim 20 as said rim changes from a substantially linear shape to that of a circle or ellipse and from said circular or elliptical shape back to said substantially linear shape as handle 18 is extended and retracted, respectively.

Peterson's slot 5 is somewhat suggestive of Applicant's slot 26 and Peterson's finger guides 7 are somewhat suggestive of Applicant's control member 24. Peterson's cavity 29 is also somewhat suggestive of Applicant's elongate bore 14. However, no structure of Peterson anticipates or suggests Applicant's truncate slot 32 formed in the bottom wall of elongate base 12 and which is in open communication with the leading half of elongate bore 14. Thus Peterson cannot anticipate or suggest the width of said truncate slot which is less than a width of the elongate bore so that a rim-supporting ledge is formed where the elongate bore and truncate slot meet. Nor can Peterson anticipate or suggest the net that depends from said rim extending to a point below bottom wall 34 of elongate base 12. Although the specification does not expressly recite the reason for the hanging of the bottom of the net below bottom wall 34 of elongate base 12, it is inherent in the structure that the reason for such non-restraint of the net is to facilitate the full and complete opening of the net as it is advanced out of elongate base 12. A net that is fully retracted within a lumen such as cavity 29 of Peterson may remain crumpled when freed from said cavity and may fail to fully deploy. Applicant solves this problem by providing a unique open-bottomed truncate slot that allows the bottom of the net to hang freely at all times so that the only net-opening required is the opening of the rim of the net as it exits the elongate bore, as

more fully claimed in dependent claim 5 where the deployment-caused transition of the rim from a linear to an elliptical shape is recited.

The subject matter of dependent claim 5, currently amended, is supported by [Para 40] and [Para 41] of the specification:

> As best understood by comparing Figs. 1-3, handle 18 is bifurcated at its leading end and the branches formed by the bifurcation form the trailing end of rim 20. Thus there is a smooth, arcuate transition from handle 18 to rim 20. Said arcuate transition is denoted 19a, 19b in Figs. 3 and 4 but it should be understood that said handle and rim are formed integrally with one another as aforesaid. This ensures that rim 20 and hence net 22 are not fully open until the respective trailing ends of said arcuate transition regions 19a, 19b have fully cleared said elongate bore 14. Arcuate transition regions 19a, 19b also enable facile retraction of rim 20 and net 22 by causing a gradual compression of said rim as its re-enters elongate bore 14. Accordingly, rim 20 is restored to its narrow profile as it exits the incision.
>
> More particularly, handle 18 is bifurcated at a leading end thereof to form a pair of branches. The pair of branches includes a first branch having a first arcuate curve formed therein and a second branch having a first arcuate curve formed therein. The first branch first arcuate curve and the second branch first arcuate curve diverge from one another in a common plane when in repose. The first branch has a second arcuate curve formed therein and the second branch has a second arcuate curve formed therein. The respective second arcuate curves of the first and second branches converge toward one another when in repose so that the first and second branches cooperate to form the rim of the foreign body capturing means. The rim has a substantially linear configuration when it is fully received within the elongate bore and has an elliptical configuration when fully extended from the elongate bore. The first arcuate curve of the first branch and the first arcuate curve of the second branch cooperate with one another to facilitate entry of the rim into the elongate bore when the foreign body capturing means is moved from its fully extended configuration to its fully retracted configuration.

Claim Rejections – 35 USC § 103

5. Applicant acknowledges the quotation of 35 U.S.C. § 103(a).

6. Applicant acknowledges the factual inquiries set forth in *Graham v. John Deere Co.*

7. Claims 1-8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sabet.

Reconsideration and withdrawal of this ground of rejection is requested. The Office argues that since Sabet includes an elongate slot formed in a top wall to accommodate an actuator, it would have been obvious to form another slot in the bottom wall to accommodate another actuator. This argument fails to consider the fact that Applicant has no second actuator in truncate slot 14 formed in bottom wall 34 and that Applicant's truncate slot allows Applicant's net to hang freely below the plane of said bottom wall 34 for the reasons provided above. Thus the addition of a second slot would have been obvious only if provided for the purpose of providing a second actuator, as the Office contends, and not for the purpose of accommodating a freely hanging net as inventively taught only by Applicant. The Sabet net is maintained in a closed configuration until it is fully deployed, as indicated in Fig. 6 (net deployed but closed) and Fig. 7 (net deployed and opened) of Sabet.

The Office also uses circular logic in this particular rejection. First it argues that it would have been obvious to add a second slot on the bottom of the Sabet device even though neither Sabet nor Peterson discloses such second slot. Then the Office argues that "omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art." However, it is Sabet, not Applicant, that omits the bottom slot. Therefore the logic is circular when the Office concludes that it would have been obvious to modify Sabet by adding Applicant's truncate slot to the bottom wall thereof. The case cited by the Office would have been appropriate if Sabet had disclosed two actuator slots and Applicant had merely omitted one of them. The Office stands that case on its head by arguing that Applicant's structure would have been obvious because Sabet eliminates Applicant's truncate slot.

8. Claims 6-8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Peterson in view of Sabet. Applicant acknowledges that these dependent claims are allowable only upon allowance of independent claim 1, currently amended.

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Conclusion

If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (813) 925-8505 is requested. Applicant thanks the Office for its careful examination of this important patent application.

Very respectfully,

SMITH & HOPEN

By: Ronald E. Smith

Dated: February 5, 2007

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CERTIFICATE OF FACSIMILE TRANSMISSION
(37 C.F.R. 1.8)

I HEREBY CERTIFY that this Amendment A, including Introductory Comments, Amendments to the Specification, Amendments to the Claims, Amendments to the Drawings and Remarks, is being transmitted by facsimile to the United States Patent and Trademark Office, Art Unit 1714, Attn: Amy T. Lang, (571) 271-8300 on February 5, 2007.

Dated: February 5, 2007

April Turley